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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,273	12/22/2005	James R. Burfiend	US030196	6573
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EXAMINER				
PERREAULT, ANDREW D				
ART UNIT		PAPER NUMBER		
3788				
NOTIFICATION DATE		DELIVERY MODE		
07/05/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/562,273

Applicant(s)

BURFIEND ET AL.

Examiner

ANDREW PERREAULT

Art Unit

3788

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6, 9, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6, 9, 11, 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/26/2011 has been entered.

Claims 6, 9, 11, and 12 stand.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 6, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (6,220,702) in view of Larkin (4,614,267)

Regarding claims 6, 9, and 11, with respect to the intended use of the claimed invention "for a fluid, for use with a personal hygiene device ... for a personal hygiene device", it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from

a prior art apparatus satisfying the claimed structural limitations. If the prior art structure is capable of performing the intended use, then it meets the claim. *Ex parte Masham*, 2 USPQ2d 1647.

With respect to claim 6, figure 6 of Nakamura discloses a flexible container (container in figure 6) capable of being used for a fluid, for use with a personal hygiene device, comprising a flexible bag (bag in figure 6) prefilled with fluid (fluid described in abstract) having a front panel portion 1 and a rear panel portion 2 and sealed along a bottom edge (1c and 2c) thereof, defining an interior volume for fluid, and further having a gusset (3 and 4) along each longitudinal edge thereof which connect the front and rear panel portions thereof and allows allow the front and rear panel portions to expand away from each other when the bag is filled, and wherein the bag includes two sealed wing portions (6 and 7) on either side of a central portion at a top end (1d and 2d) thereof, wherein the central portion includes a spout element 5 which is constructed to permit exit of fluid from the container after it has been filled.

Nakamura discloses the claimed invention except for the wing portions of substantially equal width extending above the central portion of the bag, terminating approximately in the plane of a top edge of the spout element, and wherein the wing portions include an inner edge which extends to the central portion separately from the spout element, wherein the wing portions each include an open section which extends above the gusset in fluid communication with the interior volume of the container, the open sections extending inwardly from opposing side edges of the container a small distance compared to the width of the container, the remainder of the wing portions, to

the central portion, being sealed, such that the fluid in the pre-filled bag extends into the open sections but not the sealed remainder of the wing portions wherein the open sections each have a width approximately equal to the sealed remainder of the wing portions, the open sections allowing the gusset to expand fully, permitting the bag to fill completely.

Larkin discloses a similar device (figs 1-25) comprising a flexible container for fluid wherein the container with wing portions (wing portions with interior filled with fluid at 82 within 23 in fig 2) of substantially equal width (As in fig 2) that extend above a central portion of a bag (as in fig 2) and are in fluid communication with the interior. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nakamura in view of Larkin to permit the device to further expand to contain additional fluids (Larkin; fig 2) and to reduce the amount of force required to attach to an item (Larkin col. 8: 20-63). Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the flexible container of Nakamura by extending the wing portions above the central portion of the flexible container, as shown by the container of Larkin in figure 2. The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. When old elements are simply arranged with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious. KSR at 1395-66 (citing *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)). Additionally, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the shape of the wings

because it has been held that a change in form or shape on the basis of its suitability for the intended use was an obvious extension of the prior teachings. *In re Dailey et al.*, 149 USPQ 47.

Claim 9 claims the personal hygiene device is a power toothbrush and a personal hygiene device was not positively claimed in claim 6. Therefore the personal hygiene device is treated as intended use and is given little patentable weight. The power toothbrush is also given little patentable weight because of the little patentable weight given to the personal hygiene device.

With respect to claim 11, figure 2 of Larkin further discloses a container comprising a spout element that has a valve (device at 30, 114 in fig 15, 78, 76 74; a valve as defined by Merriam Webster is a mechanical device by which the flow of liquid, gas, or loose material in bulk may be started, stopped, or regulated by a movable part that opens, shuts, or partially obstructs one or more ports or passageways; the devices listed above are mechanical devices by which the flow of liquid, gas, or loose material in bulk may be started, stopped, or regulated by a movable part that opens, shuts, or partially obstructs one or more ports or passageways; therefore Larkin discloses a valve).

2. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. in view of Larkin and further in view of Gruber (US Patent 6,918,153).

With respect to claim 12, figure 6 of Nakamura discloses a flexible container (container in figure 6) capable of being used for a fluid, for use with a personal hygiene

device, comprising a flexible bag (bag in figure 6) prefilled with fluid (fluid in abstract) having a front panel portion 1 and a rear panel portion 2 and sealed along a bottom edge (1c and 2c) thereof, defining an interior volume for fluid, and further having a gusset (3 and 4) along each longitudinal edge thereof which connect the front and rear panel portions thereof and allows allow the front and rear panel portions to expand away from each other when the bag is filled, and wherein the bag includes two sealed wing portions (6 and 7) on either side of a central portion at a top end (1d and 2d) thereof, wherein the central portion includes a spout element 5 which is constructed to permit exit of fluid from the container after it has been filled.

Nakamura discloses the claimed invention except for a fluid dispensing toothbrush which includes a pump; and the wing portions of substantially equal width of the container extend above the central portion of the bag, terminating approximately in the plane of a top edge of the spout element, and wherein the wing portions include an inner edge which extends to the central portion separately from the spout element, wherein the wing portions each include an open section which extends above the gusset in fluid communication with the interior volume of the container, the open sections extending inwardly from opposing side edges of the container a small distance compared to the width of the container, the remainder of the wing portions, to the central portion, being sealed, the open sections allowing the gusset to expand fully, permitting the bag to fill completely, wherein the flexible bag fits onto and is removable from the pump in the personal hygiene device..

Larkin discloses a similar device (figs 1-25) comprising a flexible container for fluid wherein the container with wing portions (wing portions with interior filled with fluid at 82 within 23 in fig 2) of substantially equal width (As in fig 2) that extend above a central portion of a bag (as in fig 2) and are in fluid communication with the interior. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nakamura in view of Larkin to permit the device to further expand to contain additional fluids (Larkin; fig 2) and to reduce the amount of force required to attach to an item (Larkin col. 8: 20-63). Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the flexible container of Nakamura by extending the wing portions above the central portion of the flexible container, as shown by the of the container of Larkin in figure 2. The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. When old elements are simply arranged with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious. KSR at 1395-66 (citing *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)). Additionally, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the shape of the wings because it has been held that a change in form or shape on the basis of its suitability for the intended use was an obvious extension of the prior teachings. *In re Dailey et al.*, 149 USPQ 47.

The combination of Nakamura in view of Larkin discloses the claimed invention except for the combination of a fluid dispensing toothbrush and a fluid container,

wherein the personal hygiene device includes a pump, and the flexible bag fits onto and is removable from the pump in the personal hygiene device.

Figure 2 of Gruber discloses the combination of a power toothbrush 2 and fluid containers (8 and 18), wherein the power toothbrush includes a pump 13, and the flexible bag fits onto and is removable from the pump in the personal hygiene device (column 3, lines 25-28). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Nakamura in view of Larkin by incorporating a power toothbrush, that toothbrush including a pump that connects to the flexible container in order to apply an additive to the teeth during operation, without the user having to apply an additive manually to the brush head of the toothbrush first, as taught by Gruber (column 3, lines 34-37).

Response to Arguments

Applicant's arguments filed 05/26/2011 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., personal hygiene fluid) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims to which applicant refers recite fluid "for a personal hygiene device" and fluid "for cleaning teeth," which does not limit the fluid in the manner that applicant states. As stated previously, it has been held that a recitation

with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. If the prior art structure is capable of performing the intended use, then it meets the claim. *Ex parte Masham, 2 USPQ2d 1647*. Applicant argues that Larkin does not have a specific configuration of open sections of the wing portions extending inwardly from opposing side edges a small distance compared to the width of the container. Larkin discloses wing portions (wing portions with interior filled with fluid at 82 within 23 in fig 2) with open sections (sections that can contain fluid) extending inwardly from opposing side edges a small distance compared with the width of the container (the distance from the side to the open section is smaller than the width of the container). Applicant argues that Larkin's does not include sealed portions. The area around the wing portions are sealed in Larkin, which prevent the unintentional escape of fluid. The prior art discloses, as disclosed above, disclose structure features of sealed section in the wing portions which allow for both efficient filling and emptying of the bag.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW PERREAULT whose telephone number is (571)270-5427. The examiner can normally be reached on Monday - Friday, 8:00 AM - 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Pickett can be reached on (571)272-4560. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P./
Examiner, Art Unit 3788

/J. Gregory Pickett/
Supervisory Patent Examiner, Art Unit 3788